

Indiana Election Commission

Minutes

November 20, 2003

Members Present: Brian L. Burdick, Chairman of the Indiana Election Commission (the Commission); S. Anthony Long, Vice Chairman of the Commission; Butch Morgan, member of the Commission; and Bradley R. Hiller, member of the Commission.

Members Absent: None

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Kristi Robertson, Co-Director of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Clay Patton, Co-General Counsel of the Election Division; Michelle Thompson, Campaign Finance Coordinator, Election Division; Pam Potesta, Campaign Finance Coordinator, Election Division; Lori Hershberger, Special Projects Coordinator, Election Division, Michelle Brzycki, Special Projects Coordinator, Election Division.

Also Attending: Chuck Fewell, Neil Krevoa, Linda Compton, Dan Byron, Jeff Golc, James Bopp, Barry A. Bostrom, Brooks LaPlante, Brad Klopfenstein, Don Blinzinger, Carrie Zapfe, Kyle Kasting, Mark Stratton, Maureen Bard, Richard A. Condre and Brandon Seitz.

1. Call to Order

The Chair called the November 20, 2003 meeting of the Commission to order at approximately 1:30 p.m. at the Indiana Government Center South, Training Room 6, Conference Center, 302 West Washington Street, Indianapolis, Indiana. He noted that all four Commission members were present, and that proper notice of this meeting had been given under the Open Door Law. A copy of the meeting notice and agenda is incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying at the Election Division office.]*

2. Approval of previous Commission minutes

The Chair noted that there was a backlog of meeting minutes from December 28, 2001, January 22, 2002, June 26, 2003 and the November 20, 2003 Executive Session certification that had been prepared and are now subject to approval. Mr. Long moved, seconded by Mr. Morgan, to approve the minutes of December 28, 2001, January 22, 2002, June 26, 2003 and the November 20, 2003 Executive Session. There being no further discussion, the Chair called the question, and declared that with four voting "aye" (Mr. Burdick, Mr. Hiller, Mr. Long, and Mr. Morgan), and no member voting "nay", the motion was adopted.

3. Order Approving Forms

The Chair recognized Ms. Robertson who indicated that staff was presenting for review and approval a modified version of the Voter Registration Acknowledgment Notice to allow registration officials adequate space on the form to enter the name of the voter's polling place. She stated that Order 2003-196 adopts this form change.

Ms. Robertson also informed the Commission members that the Hendricks County Voter Registration Office sought authorization to use different sizing for the Authorization to Cancel Registration (Form VRG-14). She indicated that this sizing change did not require any form change or Commission approval, but wanted the Commission members to be aware of this matter.

Ms. Robertson indicated that staff was in the process of updating forms to prepare for the 2004 elections and to implement new requirements under the Help America Vote Act ("HAVA"). She stated that staff was presenting for review and approval form changes to the Indiana Voter Registration Application and the Indiana Agency Voter Registration Application were made to comply with HAVA. The changes to the forms ask an applicant if they are a citizen of the United States and whether they will be 18 years of age by the general election. She stated that Order 2003-197 adopts these form changes.

Ms. Robertson indicated that staff was presenting for review and approval changes to campaign finance form Report of Receipts and Expenditures and campaign finance form Supplemental "Large Contribution" Report by a Candidate Committee (\$1,000 Contributions or More). The Report of Receipts and Expenditures form has not been substantively changed, but has been redesigned electronically in Word format so that it may be placed on the Election Division web site and may be completed electronically. The Supplemental "Large Contribution" Report by a Candidate Committee (\$1,000 Contributions or More) form has been edited to include the correct Indiana Code citation. She stated that 2003-198 adopts these form changes.

The Chair asked if there were any questions. There being none, the Chair indicated that the Commission would consider the orders one at a time.

Mr. Long moved that the Commission adopt Order 2003-196. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Hiller, Mr. Long, and Mr. Morgan), and no Commission member voting "no," Order 2003-196 was adopted, and is incorporated by reference in these minutes.

Mr. Hiller moved that the Commission adopt Order 2003-197. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Hiller, Mr. Long, and Mr. Morgan), and no Commission member voting "no," Order 2003-197 was adopted, and is incorporated by reference in these minutes.

Mr. Morgan moved that the Commission adopt Order 2003-198. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Burdick; Mr. Hiller; Mr. Long, and Mr. Morgan), and no Commission member voting “no,” Order 2003-198 was adopted, and is incorporated by reference in these minutes.

The Chair recognized Mr. King, who asked Commission members for their consent to follow past practice to use each member’s signature stamp on the many orders that would be submitted for Commission approval at today’s meeting. The Commission members consented.

4. Voting System Certifications (Report by Co-Directors)

- 1. Election Systems & Software Model 650 Version 1.1.9.1 centralized mark sense optical scan tabulator;**
- 2. Election Systems & Software iVotronic direct record electronic voting system firmware version 7.4.5.0 upgrade; and**
- 3. Voting Technologies International (VTI) VOTWare touch screen direct record electronic voting system software upgrade to version 3.6.10**
- 4. Sierra Election Systems, LLC optical ballot marking device**
- 5. Hart InterCivic eSlate direct record electronic voting system software upgrades: BOSS version 3.0.03.44; Tally 3.1.18; Ballot Now 2.00.09; Rally 1.1.13; JBC 2.0.13; eSlate 2.0.13; SERVO 2.0.8.**

The Chair recognized Mr. King who stated that the information in the material provided to the Commission indicates that there are several applications for certification, but none are ready for approval by the Commission at this time.

Mr. King stated that, with respect to the Election Systems & Software Model 650, which was the voting system used in the November 2003 elections in Marion County, much information regarding the application was included in the memo provided to the Commission. Before the June 26, 2003 Commission meeting, the Co-Directors were requested by ES&S to place this application on hold until after July 1, 2003, since ES&S was in the process of having a newer version of this firmware certified by an independent testing authority, and was planning to pursue system certification later in 2003, assuming that the independent testing authority had completed its work by that time.

In mid-September 2003, the Co-Directors received an inquiry from ES&S regarding whether a Commission meeting would be held before the November 2003 municipal election, and whether the Commission would proceed to approve the pending application. When advised that a Commission meeting was unlikely to be held, ES&S indicated that it would instead provide its most recently certified model to counties to use for ballot tabulations at a central location.

In late-October 2003, the Co-Directors were contacted by representatives of ES&S and the Marion County Election Board asking if it would be possible to have the Model 650 certified at a special Commission meeting for use at the November 2003 municipal elections. On

October 24, 2003, the Co-Directors received the independent testing authority report and the escrow documentation. However, both of these documents referenced version 1.1.9.1, not the newer version of the firmware (1.2.0.0). Further, the independent testing authority report indicated that the voting system complied with 1990 Federal Election Commission standards. Under Indiana law effective July 1, 2003, the voting standards that apply to voting systems in Indiana are the April 30, 2002 FEC standards.

On October 27, the Co-Directors, in response to a request from Marion County Democratic Party chair Edward Treacy, provided Commission members and Marion County Election Board members with information regarding the outstanding issues regarding this application. A copy of this letter has been provided to the Commission members and is incorporated by reference in these minutes.

Mr. King stated that there are still issues regarding escrow for this application. On August 4, 2003, and again on October 24, 2003, ES&S filed documentation from DSI indicating that a CD-ROM containing ES&S Source Code for the 1.1.9.1 firmware version had been filed with DSI, an escrow firm. However, the October 15, 2003 letter from Wyle Laboratories to Ms. McKay of ES&S (provided to the Co-Directors by the Marion County Circuit Court Clerk's office) references Model 650 with firmware release 1.2.0.0. With regard to the current application for approval of version 1.1.9.1, ES&S has met the escrow requirement. However, ES&S has not supplied proof of escrow for firmware version 1.2.0.0. Therefore, the Co-Directors need more information from ES&S regarding this matter.

Mr. Long confirmed that this system had been sold to Marion County and asked what sanction was provided, if any, under Indiana law, for the selling of uncertified equipment, firmware, hardware, software, etc. Mr. Simmons indicated that prior to using a voting system in Indiana, it must be approved by the Commission. There are sanctions in the code with regard to uncertified systems. However, those sanctions relate to the fact that the uncertified systems were used after an examination of those systems. Mr. Simmons is not aware of anything in the Election Code relating to sanctions.

In reviewing the agreement between Marion County and ES&S and Marion County, Marion County entered into a contract for the delivery of a certified system. Mr. Simmons indicated that Marion County may have contractual remedies.

Mr. Long confirmed that Indiana law does not provide for sanctions against vendors for selling uncertified voting systems. Mr. Long suggested that the Commission make the Indiana General Assembly aware of this issue, so that it may be appropriately addressed. Mr. Long indicated that a substantial financial penalty for the sale of uncertified voting equipment would provide the vendors incentive to comply with Indiana law. The Chair sought further questions or comments. Hearing none, the Chair requested Mr. King to address the Commission regarding the next certification application.

Mr. King indicated that Election Systems & Software sought to upgrade the iVotronic direct record electronic voting system to firmware version 7.4.5.0. The application is for version 7.4.5.0, but the Election Division has received documentation that the actual version number being requested for upgrade is 8.0.0.0. The Election Division is still awaiting receipt of certification from the independent testing authority that this firmware upgrade will comply with 2002 FEC standards.

Mr. Long asked whether the vendor was proposing to amend their application. Mr. King stated that it was not clear. The application was for an upgrade to version 7.4.5.0, but that the Election Division has received additional documentation via the Marion County Election Board that referenced firmware version 8.0.0.0. The Election Division has not heard from the vendor that they wish to amend their application. Mr. Long confirmed there is a fee with each application. Mr. Long stated he would vote against allowing the vendor to amend their application and would require the vendor to submit a new application. The Chair asked for any other questions or comments. Hearing none, the Chair requested Mr. King to address the Commission regarding the next certification application.

Mr. King indicated that Voting Technologies International (VTI) is seeking an upgrade of VOTWare touch screen direct record electronic voting system software to version 3.6.10. The only thing missing from the application is a report confirming that the software upgrade does conform with 2002 FEC standards. The last correspondence from the vendor indicated that they had applied for the independent certification and would supply the report to the Commission as soon as it is available. The Chair asked for any other questions or comments. Hearing none, the Chair requested Mr. King to address the Commission regarding the next certification application.

Mr. King indicated that a new vendor, Sierra Election Systems, LLC submitted an application for an optical ballot marking device. This system has not been finalized in development to the point it can be submitted to the independent testing authority. Mr. King noted that under federal law beginning in 2006, each polling place will be required to have a voting system that will allow a blind or visually impaired voter to vote independently and without assistance. Currently the only voting systems that meet this requirement are the direct record electronic or touch-screens. The vendor has submitted an application for an adaptation to an optical scan system. However, the Election Division does not yet have the required detailed documentation or the report from the independent testing authority. The Chair asked for any other questions or comments. Mr. Morgan asked if the hardware would work on all optical scan systems or just the vendor's optical scan system. Mr. King stated that the vendor indicated their adaptation would work with any optical scan systems, but would require an adaptation to make it compatible with the particular system. The Chair asked for, but did not receive any other questions or comments.

Mr. King indicated that the final voting system application was from Hart InterCivic eSlate for direct record electronic voting system software upgrades of BOSS version 3.0.03.44; Tally 3.1.18; Ballot Now 2.00.09; Rally 1.1.13; JBC 2.0.13; eSlate 2.0.13; and SERVO 2.0.8.

Hart InterCivic has received a report from Ciber, an independent testing authority, indicating that the software version upgrades have been found to be in compliance with 2002 FEC standards. However, the application is not ready to go forward because the remaining software and firmware applications are not documented as meeting the new FEC standards. The Chair asked for any other questions or comments. Hearing none, the Chair and Mr. Long thanked and complimented Mr. King.

5. County Precinct Boundary Orders and Status Reports

The Chair recognized Ms. Brzycki who indicated she was presenting the precincts of Whitley County, Blackford County and Tippecanoe County for Commission approval.

She explained that Whitley County as proposed has 34 voting precincts with no splits in Congressional, Senate or House districts. Ms. Robertson indicated that she and Mr. King were signing the Co-Director's Recommendation for approval of the proposed precinct establishment order. Mr. King concurred in Ms. Robertson's statement and indicated that it may be helpful to the Commission for Mr. Simmons to present the context of the order that is before the Commission in this matter. Mr. Simmons described the content of Order 2003-199 included approval precincts in Bartholomew, Blackford, Ripley, Tippecanoe and Whitley Counties. Mr. Simmons stated there may be issues which prevent Commission approval of less than all five of these counties and variations of that order have been prepared depending on the Commission action.

Ms. Brzycki explained that Blackford County as proposed has 12 voting precincts, no non-voting precincts and no breaches in Congressional, Senate or House districts.

Ms. Brzycki explained that Tippecanoe County as proposed has 84 voting precincts with 80 voting precincts and four (4) non-voting precincts. The city limits lines were followed. The proposed precincts have no breaches in Congressional districts, but there are breaches in Senate and House districts. However, the breaches have zero population, which is allowed under Indiana law.

Office of Census Data has reviewed all of these counties. A small issue with Tippecanoe County involves problems with the mapping. The paperwork is all correct and all the legal descriptions are included. However, Staff is having difficulty including a small sliver of property that is in a right-of-way or middle of the street, therefore, it does not affect any voters. Mr. Long confirmed that the proposed order deals with the remaining counties which have yet to be presented.

The Chair recognized Ms. Hershberger who indicated she was presenting the precincts of Ripley County and Bartholomew County for Commission approval. She indicated that the Bartholomew County Clerk and members of her staff were present. The Office of Census Data has reviewed the precinct proposal and there are no outstanding issues. The appropriate party chairmen have been notified of the boundaries. The Chair asked if there were any questions regarding Bartholomew County.

Hearing none, Ms. Hershberger presented the proposed precinct change for Ripley County. The Ripley County Clerk was unable to attend today's meeting. All appropriate party chairmen have been notified. The Office of Census Data has reviewed the precinct proposal and there are no outstanding issues. The Chair asked if there were any questions regarding Ripley County. Hearing none, the Chair asked if there was anyone present to comment on the proposed precinct establishment orders. Hearing none, Mr. Long moved for the adoption of Order 2003-199 regarding Bartholomew, Blackford, Ripley, Tippecanoe and Whitley Counties, seconded by Mr. Hiller. The Chair asked if there was any discussion on

the order. Hearing none, the Chair called the question, and declared that with four members voting “aye” (Mr. Burdick, Mr. Hiller, Mr. Long, and Mr. Morgan), and no member voting “nay”, the order was adopted. Mr. Long asked how many counties remain for approval of precincts. Ms. Brzycki confirmed that the following counties remain for Commission approval of precincts: Hancock, Jackson, Jennings, Morgan, Randolph, Marion and Steuben. Mr. Long asked the status of Steuben County. Ms. Brzycki stated she would need to review the status chart which is in the Election Division offices in order to give an accurate report of Steuben County.

Ms. Hershberger indicated that Jackson and Randolph County were ready for Commission approval, but no representatives were available to attend the Commission meeting. Morgan, Jennings and Hancock Counties have various issues which are holding up the review and approval of the proposed precincts.

Ms. Brzycki informed the Commission members that she had been out of the office on maternity leave and expected to return to the Election Division full time in the next few weeks. The Commission members congratulated Ms. Brzycki on the birth of her daughter.

Mr. King reported to the Commission on the precinct change survey results. The Election Division sent a survey to county clerks asking if they would be interested in making precinct changes before the 2004 elections. Under Indiana law, for precinct changes to be effective for next year’s elections, they need to be finalized prior to the beginning of candidate filing which is January 21, 2004. The totals show only six counties indicated that they wish to make changes effective for 2004. These possible changes affect a total of 20 precincts. The Chair asked if there were any questions. The Commission had no further questions.

6. Campaign Finance Enforcement

A. Action on pending collection matters

1. Christopher Watts

2. Phillip Eldridge

The Chair recognized Ms. Thompson, who indicated that information regarding these committees had been provided to the Commissioners and no other information is available. The Chair noted that the Commissioners were aware of these matters and asked if there were any questions or comments. There were none.

B. Excess corporate and labor contributions (continued cases)

The Chair notified the other Commission members that he had executed a proxy for Tom John to serve as Chair for the following matters.

Parsons, Brinckerhoff, Quade & Douglas, Inc. (Cause # 03-155)
E.D.I.S., Inc. (Cause #03-141)

Kroger Company (Cause #03-145)
SerVaas Incorporated (Cause #03-156)

The Chair noted there may be other items later in the agenda for which he will need a proxy. The Chair stated that the above entities are in some capacity clients of his law firm and he has a legal conflict and that his need for a proxy would happen every now and then. The Commissioners had a discussion where they agreed to deviate from the agenda and agreed to take certain matters out of order to facilitate the Chair's need for a proxy.

In addition to the above matters, the following matters under section C. Excess Corporate and Labor Contributions will be heard by proxy Mr. John.

Prairie Group (Cause #03-146)
Ratio Architects, Inc. (Cause #03-147)
Reynolds Company (Cause #03-148)
Sherman R. Smoot Company (Cause #03-149)
Harcourt Industries, Inc. (Cause #03-152)

Mr. King noted for the record that the proxy referred to by Chairman Burdick has previously been filed with the Election Division

1. Parsons, Brinckerhoff, Quade & Douglas, Inc. (Cause #03-155)

The Chair recognized Ms. Thompson who indicated that the corporation had requested a continuance. Mr. Long asked if this was the first request for a continuance. Ms. Thompson indicated that it was the first request for a continuance. Mr. Long stated he had no objection to it and moved to a continuance allowing this matter to be heard at the next Commission meeting. Mr. Morgan seconded the motion.

The Chair recognized Mr. King, who informed the Commissioners that this continuance request was different, in that it is a two-part continuance request. The motion requests the continuance of the Parsons matter and requests that the issue of excess contributions in general be continued.

Ms. Robertson indicated that counsel for Parsons was present. The Chair stated the Commission would entertain brief argument from counsel on the motion and recognized John Koenig from the law firm of Barnes & Thornburg. Mr. Koenig stated his law firm represents Parsons and that the primary counsel for this client, Joseph Chapelle, is out of state, thus requiring the continuance motion. The basis for requesting a continuance of all issues regarding excess contributions relates to past practice of the Commission and Parsons interest in how the Commission would treat all excess corporate contributors. Mr. Koenig also indicated that his client did not receive sufficient notice in order to prepare for today's hearing or for witnesses to make themselves available. The Chair asked counsel if he could cite any precedence allowing for the continuance of all matters. Mr. Long asked whether Parsons would have any standing to make such a request.

Mr. Koenig stated that under the Administrative Procedures Act, the Commission is required to provide five (5) days notice to parties to a hearing. Mr. John indicated that the point was well taken with regard to Parsons standing on its own case, but asked what the argument was regarding standing for Parsons to request a continuance of other matters. Mr. Koenig noted that improper notice was given to not only Parsons, but to other entities which have hearings before the Commission today. Mr. Long asked whether the Commission should impose a continuance on other entities who want to waive any "notice" issues. Mr. Koenig stated he did not take that position, but he was trying to preserve precedence because the feel their case is on point with the Meyer case. Mr. John asked if it was fair to say that Parsons did not have any precedence allowing them a continuance of all matters. Mr. Koenig confirmed he did not have a case he could cite to the Commission which allows such a continuance.

Mr. Long moved to continue Parsons cause only. Mr. John confirmed the content of Mr. Long's motion. Mr. Morgan seconded the motion. There being no further discussion, Mr. John called the question, and declared that with four members voting "aye" (Mr. Hiller; Mr. John; Mr. Long, and Mr. Morgan), and no Commission member voting "nay," the motion was adopted.

2. E.D.I.S., Inc. (Cause #03-141)

The Chair recognized Ms. Potesta, who indicated that on August 10, 2000, the respondent contributed to the Indiana Democratic State Central Committee bringing their year to date total to \$6,000 which is a \$1,000 excess of the amount allowed under Indiana law. The Indiana Democratic State Central Committee refunded \$1,000 to respondent. The maximum civil penalty is three (3) times the amount of the excess contribution.

Mr. John asked that anyone wishing to present testimony today to stand and be sworn. Mr. King administered the oath.

The Chair recognized Mr. Richard Condre, Vice President of E.D.I.S. Mr. Condre indicated that matter was an embarrassment, as he was the person who wrote the check. He stated that the Indiana Democratic State Central Committee brought this matter to their attention and refunded \$1,000 to them. Mr. Condre acknowledged the clerical error. Mr. Hiller asked if this was a first offense. Mr. John brought up the notice issues and asked Mr. Condre if he wished to proceed with this matter today and waived any notice issues. Mr. Condre indicated that he did not have any problem with proceeding today.

Mr. Long raised the point for new Commission members that the former Chair desired to adopt a policy in which the Commission would levy a fine of 10% of the excess contribution for first time offenses, a second time offense would be the full amount of the excess contribution, a third time offense would be double the excess contribution, and any offense after three times would be the full three times the amount of the excess contribution. Mr. Long moved to follow this policy. Mr. John

stated he did not desire to implement a blanket policy and desired to take each matter on a case by case basis. Mr. John stated he would entertain a motion as to this cause alone. Mr. Long moved to assess a penalty of \$100. Mr. Morgan seconded the motion. There being no further discussion, Mr. John called the question, and declared that with four members voting “aye” (Mr. Hiller; Mr. John; Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the motion was adopted.

3. Kroger Company (Cause #03-145)

The Chair recognized Ms. Thompson who stated that Kroger contributed to O’Bannon for Indiana Committee in an amount exceeding the limit of corporate contributions by \$250. The O’Bannon for Indiana Committee did refund the \$250. The Chair recognized John Barnett, attorney for Kroger. Mr. Barnett introduced Mr. Jeff Golc, Public Affairs Manager for Kroger. Mr. Barnett stated they were both involved in this particular situation. Mr. Barnett stated that Kroger made a \$250 contribution and a few months later made a \$5,000 contribution. Once Mr. Barnett became aware of this excess contribution, he contacted the O’Bannon for Indiana Committee to begin the process of a refund. The check for \$250 was promptly mailed from the O’Bannon for Indiana Committee to Kroger and Kroger was only “overdraft” on the contribution limits for a period of five (5) days. Mr. Barnett indicated that Kroger had never been before the Commission before. Mr. Morgan moved to dismiss the cause. Mr. Long seconded the motion.

Mr. John brought up the notice issues and asked Mr. Barnett if he wished to proceed with this matter today and waived any notice issues. Mr. Barnett indicated that he waived any issues with regard to notice. Mr. Hiller requested that Mr. Morgan and Mr. Long explain the basis motion. Mr. Morgan stated that having been through many hearings on campaign finance violations in the past several years, it is apparent Kroger acted in a timely fashion to correct the situation and that is the reason for his motion to dismiss. Mr. Morgan pointed out the Kroger caught the excess contribution before the regulatory agency did. The Commission discussed whether the previous violation by E.D.I.S. was discovered by the campaign finance committee or by the Election Division.

Ms. Potesta indicated that a copy of the check from Indiana Democratic State Central Committee to E.D.I.S. was included in the Commissioner’s packet. Mr. Morgan stated that a 1999 case with Meijer was dismissed due to a similar situation where the contributor caught their own mistake and took corrective matters. Mr. Hiller stated he did not want to change precedence, but would like to treat everyone fairly.

There being no further discussion, Mr. John called the question, and declared that with two members voting “aye” (Mr. Long and Mr. Morgan), and two Commission members voting “nay” (Mr. Hiller and Mr. John) the motion failed.

Mr. Hiller moved to fine Kroger 10% of the excess contribution or \$25. Mr. John seconded the motion. There being no further discussion, Mr. John called the question, and declared with two members voting “aye” (Mr. John and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

Mr. Simmons advised the Commission that under two (2) to two (2) tie on either of the votes on motions pending before the Commission there is no official action according to Indiana Code 3-6-4.1-7. It takes three (3) affirmative votes to take official action. Mr. Simmons indicated that under the current situation there would be no action taken and no fine imposed.

4. SerVaas Incorporated (Cause #03-156)

The Chair recognized Ms. Thompson who stated SerVaas Incorporated has requested a motion for continuance. Mr. Hiller moved to grant the motion for continuance. Mr. John seconded the motion. There being no further discussion, Mr. John called the question, and declared that with four members voting “aye” (Mr. Hiller; Mr. John; Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the motion was adopted.

The Chair indicated that the Commission was taking agenda items out of order and move on to Orders concerning campaign enforcement hearings.

C. Orders concerning campaign finance enforcement hearings

Excess Corporate and Labor Contributions

The Commission members discussed the approval of orders from previous hearings and the problem presented by Mr. Burdick’s need for a proxy for some, but not all of these entities.

Mr. Long moved to approve the Orders on the following matters:

Prairie Group (Cause #03-146) Order 2003-181
Ratio Architects, Inc. (Cause #03-147) Order 2003-182
Reynolds Company (Cause #03-148) Order 2003-183
Sherman R. Smoot Company (Cause #03-149) Order 2003-184
Harcourt Industries, Inc. (Cause #03-152) Order 2003-187

Mr. Hiller seconded the motion. There being no further discussion, Mr. John called the question, and declared that with four members voting “aye” (Mr. Hiller; Mr. John; Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the Orders were adopted.

B. Excess corporate and labor contributions (continued cases)

Mr. Burdick returned as Chair noting that all of the cases which presented a conflict for him had been heard and the Commission would return to item 6B on the agenda. Mr. Burdick apologized and contemplated better organization for future commission meetings. The Commission returned to items in Section 6B of the agenda regarding excess corporate and labor contributions (continued cases).

5. Divinity Funeral Home (Cause #03-140)

The Chair recognized Ms. Potesta who indicated that on March 23, 2000, Divinity Funeral Home had contributed \$6,000 to Smith for Senate Committee. This is an excess contribution of \$4,000. The Election Division sent a letter to which they had no response. The Chair recognized Linda Pence who indicated that she had filed an appearance on behalf of Divinity and Senator Smith. Ms. Pence indicated that this is a somewhat unusual case as Divinity Funeral Home is owned by Senator Smith. Divinity is a sub-chapter S corporation. Senator Smith is a 100% owner and shareholder of Divinity Funeral Home. Senator Smith has one bank account which covers Divinity Funeral Home and his and his wife's personal funds. Senator Smith made a contribution of \$6,000 of cash and in-kind contributions. In learning how to properly complete the campaign finance documents, Senator Smith was advised that because Divinity was a corporation he should refund those excess amounts. The Chair confirmed with Ms. Pence that Senator Smith has no personal checking accounts. Ms. Pence confirmed that at the time, this was a business and personal account. Ms. Pence also indicated that they waived any issues regarding faulty notice of today's hearing. The Commission members had discussion to determine whether refunds had been made from Smith for Senate Committee to the Divinity Funeral Home. Ms. Pence pointed out that some of the contributions were in-kind. Mr. Long confirmed with staff that this excess contribution to and refund from Smith for Senate Committee was detailed on the same campaign finance filing.

The Chair asked for any discussion. Mr. Long moved to dismiss this cause. Mr. Morgan seconded the motion. Mr. Long explained his motion in that the Committee corrected the excess contribution in one reporting cycle before it was reported anywhere and this type of responsibility should be encouraged. Mr. Hiller indicated that he felt the Commission dropped the ball on the E.D.I.S. matter, as they seemed to have a similar situation to the current matter and they received a fine. Mr. Morgan stated that in the Divinity matter, the excess contribution was caught by the contributor before any report was filed, while in E.D.I.S. the excess contribution was discovered by another entity.

The Chair noted that a review of past Commission minutes revealed a custom where the Commission took advantage of a section of the law which permits a reduction in the fine. The Chair noted that he believes it is good policy to reduce fines for entities who self-report errors. There being no further discussion, Mr. Burdick called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr.

Hiller; Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the motion was adopted.

The Chair indicated that the Commission was fearful of applying inconsistent policy. Mr. Simmons indicated that the imposition of a fine was an official action and the waiver of penalty would be an official action requiring four (4) votes. The Chair turned the meeting over to Vice-Chair Long. The Commission members held a discussion regarding a previously heard matter on E.D.I.S. and miscommunication and misunderstanding among the Commission members surrounding the facts of that excess contribution. Vice-Chair Long suggested the Chair have a proxy at the next meeting to deal with the oversight on the E.D.I.S. matter.

Upon Chairman Burdick’s return to the meeting, Mr. Long indicated that they were asking Mr. Burdick to have a proxy at the next meeting to deal with the E.D.I.S. cause.

6. International Union of Painters & Allied Trades (Cause #03-144)

The Chair recognized Ms. Thompson who stated that Order # 2003-194 has been prepared for the Commission’s review. Ms. Thompson indicated that the Commission imposed a fine on this labor organization at the last meeting in June 2003, but that the Commission has since been provided information that there was not an excess contribution, as the information was reported on the wrong schedule.

Mr. Simmons indicated that he drafted the proposed order. Mr. Simmons stated since there was a previous motion, but no order had been signed yet and he drafted the order to recognize and acknowledge the previous meeting and motion. Due to the additional evidence presented here today, the foundation of that motion and vote were faulty. The current order would incorporate all of this information and indicate that the Commission has reconsidered this matter based upon this new evidence. The Chair confirmed that the official action needed to be taken was approval of Order # 2003-194. Mr. Long moved for the adoption of Order # 2003-194. Mr. Morgan seconded the motion.

There being no further discussion, Mr. Burdick called the question, and declared that with four members voting “aye” (Mr. Burdick, Mr. Hiller; Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the motion was adopted.

The Commission returned to items in Section 6C of the agenda regarding Orders concerning campaign finance enforcement hearings.

C. Orders concerning campaign finance enforcement hearings

The Commission returned to items in Section 6C of the agenda regarding Orders concerning campaign finance enforcement hearings. The Chair reviewed the list of Orders to be reviewed for the Commission’s approval.

Hanson Engineers (Cause #03-142) Order 2003-179
Hughes Group, Inc. (Cause #03-143) Order 2003-180
Bonar Group (Cause #03-150) Order 2003-185
Contech Construction Product, Inc. (Cause #03-151) Order 2003-186
Hok Group, Inc. (Cause #03-153) Order 2003-188
Hughes Group, Inc. (Cause #03-154) Order 2003-189
The Rosk Group, Inc. (Cause #03-157) Order 2003-190
ISM Security (Cause #03-158) Order 2003-191
Jacobi, Toombs & Lanz, Inc. (Cause #03-159) Order 2003-192
The Rosk Group, Inc. (Cause #03-160) Order 2003-193

Mr. Long moved to approve the Orders on these matters. Mr. Hiller seconded the motion. Mr. Burdick confirmed that the fines on these matters are 10% of the excess contribution. There being no further discussion, Mr. Burdick called the question, and declared that with four members voting “aye” (Mr. Burdick, Mr. Hiller; Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the Orders were adopted.

Delinquent April 21, 2003 Filings

The Chair recognized Michelle Thompson who indicated that Orders had been prepared for all these matters with Order #2003-141 through Order #2003-166. These Orders were prepared from the actions taken by the Commission at the June 26, 2003 meeting. The Chair reviewed the list of Orders to be reviewed for the Commission’s approval.

Indiana Federation of Republican Women (Cause #03-321-101)
BackPAC (Cause #03-1189-102)
Eighth District Democrat Committee (Cause #03-1782-103)
Indiana Fraternal Order of Police Action Plan (Cause #03-1798-104)
National Federation of Independent Business (Cause #03-1979-105)
Ninth District Republican Committee (Cause #03-3434-106)
Indiana State Bar Association PAC (Cause #03-3435-107)
Indiana Right to Life PAC (Cause #03-3450-108)
French Lick Idea Fund (Cause #03-3685-109)
Indiana Black Legislative Caucus PAC (Cause #03-3908-110)
FOP Lodge 86 PAC (Cause #03-3979-111)
Jobs for Southwestern Indiana (Cause #03-4128-112)
Indiana Family and Freedom Committee (Cause #03-4231-113)
Gary Firefighters Political Action Committee (Cause #03-4261-114)
SAFECO Political Action Committee (Cause #03-4367-115)
Constitution Party of Indiana State Committee (Cause #03-4416-116)
KeyCorp Political Action Committee (Cause #03-4429-117)
Indiana Association of Homes & Services for the Aging PAC (Cause #03-4458-118)
Hoosiers Against Crazy Taxes (Cause #03-4472-119)
Microsoft Corporation PAC (Cause #03-4664-120)
Republican 2nd District Central Committee (Cause #03-4695-121)

Indiana Stonewall Democrats (Cause #03-4707-122)
International Brotherhood of Electrical Workers Local 531 (Cause #03-4837-123)
Indiana Democrats for Accessibility (Cause #03-4865-124)
Hoosier Taxpayers Alliance (Cause #03-4916-125)
Quality Through Progress PAC (Cause #03-4935-126)

Mr. Long asked whether these required a majority vote to approve the Orders. Mr. Long indicated that there is a potential conflict with regard to the Eight District Democrat Committee. Mr. Long indicated he would vote to approve the Order if it required unanimous vote of the Commission. Mr. Simmons indicated that the Orders required unanimous approval. Mr. Long moved to approve Orders #2003-141 through Order #2003-166 *en masse*. Mr. Hiller seconded the motion. There was discussion regarding conflicts regarding the cases heard by Commission members. Mr. Burdick offered Mr. Long the opportunity for a proxy on the issue of the Eight District Democrat Committee. Mr. Long declined, stating that the action was taken at the last meeting and it was not advantageous to the Committee.

There being no further discussion, Mr. Burdick called the question, and declared that with four members voting “aye” (Mr. Burdick, Mr. Hiller, Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the Orders were adopted.

D. Committee to Elect Brooks LaPlante

Motion for Supplementary Hearing (Cause #03-4815-130 through 139)

The Chair recognized Jim Bopp, counsel for Brooks LaPlante. Mr. Bopp stated that Indiana Code requires the Election Commission to issue a written order within 90 days of the conclusion of a hearing, unless that period has been waived or extended by written consent of all parties. Mr. Bopp indicted that written consent waiving this issue had not and would not be given. Mr. Bopp stated that any action taken more than 90 days ago could not be acted on with a final order and that any action taken on that matter now would require a supplemental hearing allowing for additional evidence. Mr. Bopp argued that pursuant to Indiana Code 4-21.5-3-27(g), a final order cannot be issued by the Commission under the law. Mr. Bopp stated that the Commission would be free to make a decision following consideration of the evidence presented at the June 26, 2003 hearing and supplemental evidence subsequently presented.

Mr. Long asked who Mr. Bopp represents, as Brooks LaPlante is not a party. However the Committee to Elect Brooks LaPlante is a party to this action. Mr. Bopp indicated that the purpose of the intended motion was to represent the respondent committee. Mr. Bopp requested that the Commission deem his motion to be on behalf of the Committee. Mr. Long stated he had no objection with allowing Mr. Bopp to amend his filings.

Mr. Burdick stated that the Commission would take notice that Mr. Bopp has entered an appearance on behalf of the Committee. Mr. Long confirmed that Mr. Bopp was not requesting a Supplemental Hearing for all of his client’s cases, including the cases where the

Commission found in favor of his client, but only requesting a Supplemental Hearing on cases where the Commission found against his client. Mr. Long asked whether Mr. Bopp thought those Orders where the Commission found for his client would be properly entered. Mr. Bopp stated there would be no injured party, but it is true that those orders would not be in accordance with law. Mr. Bopp confirmed that if his motion was granted, he was prepared to go forward today.

Mr. Burdick entertained a motion to grant the motion of Mr. Bopp for a Supplementary Hearing. Mr. Hiller so moved. Mr. Long seconded the motion. Mr. Long stated that since the Committee had an attorney now and if they have something else they want the Commission to hear with regard to the large contributions, the Commission should allow it. Mr. Long stated he was not convinced that the Commission cannot sign the Orders, as the Committee would not object to the Commission signing the Orders for which the Commission found in the Committee's favor.

There being no further discussion, Mr. Burdick called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Hiller; Mr. Long, and Mr. Morgan), and no Commission member voting "nay," the motion was granted.

Supplementary Hearing

Chairman Burdick indicted that he would limit testimony to ten (10) minutes. Mr. Long suggested that the Chair call for a staff report prior to taking testimony. Ms. Thompson indicated that information from the June 26, 2003 Commission meeting was in the Election Division office. Chairman Burdick called a short recess to allow staff to retrieve documentation from the June 26, 2003 Commission hearing.

After a brief recess, Chairman Burdick resumed the hearing and called for a staff report. Ms. Thompson stated that the spreadsheet she had provided to the Commissioners showed the following Cause Numbers with the proposed civil penalties against the Committee to Elect Brooks LaPlante for delinquent supplemental large contribution reports:

Cause #03-4815-130	\$1,000
Cause #03-4815-131	\$1,000
Cause #03-4815-132	\$1,000
Cause #03-4815-133	\$1,000
Cause #03-4815-134	\$1,000
Cause #03-4815-135	\$1,000
Cause #03-4815-136	\$1,000
Cause #03-4815-137	\$1,000
Cause #03-4815-138	\$1,000
Cause #03-4815-139	\$1,000

After further Commission discussion, Mr. Burdick stated that he felt all of these Cause Numbers should be considered as one (1) violation and moved that the Commission fine the committee 25% of the proposed fine for one (1) violation, which was \$250. Mr. Hiller seconded the motion.

Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

Following further discussion, Mr. Long moved that the Commission find that the Committee to Elect Brooks LaPlante failed to file the proper campaign finance reports. Mr. Morgan seconded the motion.

Mr. Burdick called the question, and declared that with four members voting “aye” (Mr. Burdick, Mr. Long, Mr. Morgan and Mr. Hiller), and no Commission member voting “nay,” the motion was adopted.

Mr. Long moved that the Commission impose a civil penalty on the Committee to Elect Brooks LaPlante for failure to file the proper campaign finance reports. Mr. Morgan seconded the motion.

Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Long and Mr. Morgan), and two members voting “nay” (Mr. Burdick and Mr. Hiller) the motion failed.

Orders 2003-168 through 2003-177, concerning the Committee to Elect Brooks LaPlante, were prepared by staff in conjunction with the Commission meeting on June 26, 2003 and are incorporated by reference in these minutes.

Referral to Prosecuting Attorneys (Order 2003-178)

After Commission discussion, Mr. Long moved that the Commission adopt Order 2003-178 Referral to Prosecuting Attorneys. Mr. Morgan seconded the motion.

Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Long and Mr. Morgan), and two members voting “nay” (Mr. Burdick and Mr. Hiller) the motion failed.

Delinquent CFA-11 report (Cause # 03-4815-161)

After Commission discussion, Mr. Burdick moved that the Commission dismiss Cause # 03-4815-161. Mr. Hiller seconded the motion.

Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

Order concerning delinquent October 18, 2002 report (Order 2003-167)

After Commission discussion, Mr. Hiller moved that the Commission adopt Order 2003-167. Mr. Burdick seconded the motion.

Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

E. New Causes – Delinquent October 17, 2003 Filings

Indiana Federation of Republican Women (Cause #03-321-163)

The committee has requested a continuance of this cause. Mr. Hiller moved that the Commission continue Cause #03-321-163. Mr. Burdick seconded the motion. Mr. Burdick called the question, and declared that with four members voting “aye” (Mr. Burdick, Mr. Hiller, Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the motion was adopted.

Miller Neese Pac (Cause #03-4982-185)

The committee has requested a continuance of this cause. Mr. Hiller moved that the Commission continue Cause #03-4982-185. Mr. Burdick seconded the motion.

Mr. Burdick called the question, and declared that with four members voting “aye” (Mr. Burdick, Mr. Hiller, Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the motion was adopted.

Kindred Healthcare Inc. PAC (Cause #03-4209-173)

Indiana Citizens for Property Rights (Cause #03-4375-177)

Microsoft Corporation PAC (Cause #03-4664-180)

Mr. Hiller moved that the Commission dismiss Cause #03-4209-173, Cause #03-4375-177 and Cause # 03-4664-180. Mr. Burdick seconded the motion.

Mr. Burdick called the question, and declared that with four members voting “aye” (Mr. Burdick, Mr. Hiller, Mr. Long, and Mr. Morgan), and no Commission member voting “nay,” the motion was adopted.

Citizens for Better Roads (Cause #03-42-162)

Verizon Communications Inc. GGC - Indiana (Cause #03-370-164)

Indiana Society of Anesthesiologists (Cause #03-3169-167)

National City Corporation Political Action Committee (Cause #03-3239-168)

Indiana Broadcasters Committee for Good Government (Cause #03-4412-178)

Evansville Professional Firefighters Local #357 PAC (Cause #03-4742-181)

Young Hoosiers (Cause #03-4978-184)

Alliance of American Insurers Political Contributions Account (Cause #03-4987-186)

Citizens for Better Roads filed their campaign finance report on October 20, 2003, had never been before the Commission previously and had a proposed civil penalty of \$152.50.

Verizon Communications Inc. GGC – Indiana filed their campaign finance report on October 20, 2003, had never been before the Commission previously and had a proposed civil penalty of \$152.50.

Indiana Society of Anesthesiologists filed their campaign finance report on October 20, 2003, had never been before the Commission previously and had a proposed civil penalty of \$152.50.

National City Corporation Political Action Committee filed their campaign finance report on October 21, 2003, had never been before the Commission previously and had a proposed civil penalty of \$202.50.

Indiana Broadcasters Committee for Good Government filed their campaign finance report on October 21, 2003, had never been before the Commission previously and had a proposed civil penalty of \$202.50.

Evansville Professional Firefighters Local #357 Pac filed their campaign finance report on October 21, 2003, had never been before the Commission previously and had a proposed civil penalty of \$202.50.

Young Hoosiers filed their campaign finance report on November 14, 2003, had never been before the Commission previously and had a proposed civil penalty of \$1,002.50.

Alliance of American Insurers Political Contributions Account filed their campaign finance report on October 20, 2003, had never been before the Commission previously and had a proposed civil penalty of \$152.50.

After Commission discussion, Mr. Burdick moved that the Commission fine these committees 25% of the proposed fine, plus costs. Mr. Hiller seconded the motion.

There being no further discussion, Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

Indiana Psychologists PAC (Cause #03-1543-165)

Indiana Psychologists PAC has not filed their campaign finance, had been before the Commission one previous time and had a proposed civil penalty of \$1,002.50.

After Commission discussion, Mr. Burdick moved that the Commission fine these committees 50% of the proposed fine, plus costs. Mr. Hiller seconded the motion.

There being no further discussion, Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

Jobs for Southwestern Indiana (Cause #03-4128-172)

Jobs for Southwestern Indiana filed their campaign finance report on October 20, 2003, had been before the Commission twice previously and had a proposed civil penalty of \$152.50.

After Commission discussion, Mr. Burdick moved that the Commission fine these committees 75% of the proposed fine, plus costs. Mr. Hiller seconded the motion.

There being no further discussion, Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

Safe PAC (Cause #03-3756-169)

Safe PAC filed their campaign finance report on October 17, 2003, had been before the Commission on three previous occasions and had a proposed civil penalty of \$52.50.

After Commission discussion, Mr. Burdick moved that the Commission fine these committees 100% of the proposed fine, plus costs. Mr. Hiller seconded the motion.

There being no further discussion, Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

Citizens for Effective Government (Cause #03-3992-171)

Count US! Political Action Committee (Cause #03-4925-183)

The Chair recognized Ms. Potesta who stated that Citizens for Effective Government filed their campaign finance report on October 24, 2003, that this committee had never been before the Commission previously and the proposed civil penalty was \$352.50. Ms. Potesta stated Count US! Political Action Committee filed their campaign finance report on October 23, 2003, that this committee had never been before the Commission previously and the proposed civil penalty was \$302.50. There being no party present to testify on behalf of the committees, Mr. Burdick closed the public hearing. Mr. Burdick moved that the Commission fine both of these committees 25% of the proposed fine, plus costs. Mr. Hiller seconded the motion.

There being no further discussion, Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

Gary Fighters Political Action Committee (Cause #03-4261-176)
Indiana Democrats for Accessibility (Cause #03-4865-182)

The Chair recognized Ms. Potesta who stated that Gary Firefighters Political Action Committee filed their campaign finance report on October 22, 2003 and had a proposed civil penalty of \$252.50 and the committee had been before the Commission one previous time. Ms. Potesta stated that Indiana Democrats for Accessibility filed their campaign finance report on October 23, 2003 and had a proposed civil penalty of \$302.50 and had been before the Commission one previous time. There being no party present to testify on behalf of the committees, Mr. Burdick closed the public hearing. Mr. Burdick moved that the Commission fine both of these committees 50% of the proposed fine, plus costs. Mr. Hiller seconded the motion.

There being no further discussion, Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

Michigan City Firefighters PAC (Cause #03-3957-170)
Hoosiers Helping Home Care (Cause #03-4228-174)

The Chair recognized Ms. Potesta who stated that Michigan City Firefighters PAC filed their campaign finance report on November 4, 2003 and had a proposed civil penalty of \$902.50 and the committee had been before the Commission twice. Ms. Potesta stated that Hoosiers Helping Home Care filed their campaign finance report on October 27, 2003 and had a proposed civil penalty of \$502.50 and had been before the Commission twice. There being no party present to testify on behalf of the committees, Mr. Burdick closed the public hearing. Mr. Burdick moved that the Commission fine both of these committees 75% of the proposed fine, plus costs. Mr. Hiller seconded the motion.

There being no further discussion, Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

South Bend Firefighters PAC (Cause #03-1871-166)
Indiana Family and Freedom Committee (Cause #03-4231-175)
Hoosiers Against Crazy Taxes (Cause #03-4472-179)

The Chair recognized Ms. Potesta who stated that South Bend Firefighters PAC filed their campaign finance report on October 24, 2003 and had a proposed civil penalty of \$352.50 and the committee had been before the Commission on three previous occasions. Ms. Potesta stated that Indiana Family and Freedom Committee filed their campaign finance report on October 22, 2003 and had a proposed civil penalty of \$252.50 and had been before the Commission on five previous occasions. Ms. Potesta stated that Hoosiers Against Crazy Taxes have not filed their campaign finance report and had a proposed civil penalty of \$1002.50 and had been before the Commission on four previous occasions. There being no party present to testify on behalf of the committees, Mr. Burdick closed the public hearing.

Mr. Burdick moved that the Commission fine these committees 100% of the proposed fine, plus costs. Mr. Hiller seconded the motion.

There being no further discussion, Mr. Burdick called the question, and declared that with two members voting “aye” (Mr. Burdick and Mr. Hiller), and two members voting “nay” (Mr. Long and Mr. Morgan) the motion failed.

7. Voter Registration File Compilation and File Format

The Chair recognized Ms. Robertson who stated that the Commission approves the voter registration format that all 92 county voter registration offices submit to the Election Division once a year. The Indiana Election Division has been in contact with both Republican and Democratic state party organizations to learn if they had any guidance or suggestions for improving this since they are the largest buyers/users of the lists. Ms. Robertson indicated that the parties are providing this information to the Election Division and that she and Mr. King would bring this information to the Commission.

Mr. Hiller asked whether county registration officials are required to include voters’ telephone numbers when they input voters’ other data. Ms. Robertson stated that registration officials are required to input the information on the file if it is available, but a voter is not required to give a telephone number in order to register. Mr. Hiller asked if it would be odd for a county voter registration file to contain no telephone numbers at all. Ms. Robertson stated it would not necessarily be odd, but it would raise the question whether the telephone number “field” had been left off of the data file, as some voters would give a telephone number.

Mr. Burdick asked if there were any further questions. Hearing none, the Mr. Burdick moved to the next item on the agenda.

8. Report by Co-Directors

A. Revision of Voter’s Bill of Rights for 2004

The Chair recognized Mr. King who stated that the Voter’s Bill of Rights is required to be posted at polling places under federal law. Additional information is required to be added to the Voter’s Bill of Rights. The Commission previously approved this year’s poster and this will be bringing a revision back.

B. Order approving an absentee ballot device (HEA 1980)

Mr. King stated that during the 2003 legislative session, the Indiana General Assembly passed a bill that provided in a case where a circuit court clerk was appearing on the ballot as a candidate for re-election or for another office, the seal and signature used on the absentee ballots could not bear the clerk’s name. The new law provides for the Commission to adopt

a uniform device to be used statewide. He stated the Co-Directors would bring the Commission an Order to adopt a designated uniform device.

C. Help America Vote Act of 2002: federal funding and State HAVA Plan

Mr. King stated that the statewide voter registration system is required to be operational by January 1, 2006. As a result, the Secretary of State and the Co-Directors have entered into a contract to have an architect design the system. The design work is underway and Mr. King anticipates having a Request for Proposal (RFP) for bids go out around the end of 2003 or early 2004.

Ms. Robertson stated that applications from counties that wished to apply for reimbursement for the purchase of voting equipment was due at the end of October 2003. A number of counties have applied and the next step is to take the applications before the Budget Committee which will meet in January 2004. The Budget Committee will consider and approve reimbursement to counties for a portion of the costs. Ms. Robertson indicated that details of the state plan were on the Election Division website. Mr. Burdick commented that he has a concern that any money received by the state be reimbursed to counties for equipment rather than reimbursement being made for non-equipment items such as maintenance agreements. Mr. Burdick requested that he be made aware if this becomes an issue with the counties. Ms. Robertson indicated that the plan did prioritize the money in an attempt to take care of the counties that were on punch card or lever machines in 2000 and may still have that type of voting system. The plan focused on paying for equipment upgrades, rather than legal fees or maintenance costs. The Election Division, Secretary of State's Office, the Budget Agency and the Budget Committee will be reviewing all the contracts and what the counties are requesting to determine if it is appropriate under federal law, state law and the state plan. Mr. Hiller asked if any punch card counties had failed to apply. Ms. Robertson indicated in the affirmative. She stated that the October 31, 2003 application deadline was due to the Budget Committee's upcoming meeting and that a county could still submit their reimbursement application now, but those applications received after October 31st would not be considered by the Budget Committee until after the legislative session. Mr. Hiller asked whether punch card counties had been contacted. Ms. Robertson stated that counties could not submit an application until they had actually entered into a contract for the purchase of new voting equipment and some punch card counties had not yet purchased equipment.

There being no further questions or discussion Mr. Burdick moved on to the next item on the agenda.

9. Litigation and Voter Registration Investigations Update

The Chair recognized Mr. Simmons who directed the Commissioners to a memorandum that they had been provided regarding the status and background information of current litigation regarding the Commission.

Mr. Simmons stated that *Majors v. Abel* case is a challenge to the constitutionality of Indiana's disclaimer statutes which require individuals to place a disclaimer on advertising which states

what entity paid for the advertisement. The Indiana Supreme Court issued a decision on July 24, 2003, holding that the statutes apply to individuals, as well as to candidates and committees. No further argument has been scheduled or requested and the matter is pending final disposition by the Seventh Circuit Court of Appeals.

Mr. Simmons stated that the Commissioners were briefed on the background of *Toth v. Marendt* during executive session and the litigation strategy discussion.

Mr. Simmons stated that *Ogden and Right to Life PAC v. Marion County Election Board* involves a constitutional challenge to the primary slating statute. The statute makes it unlawful to publish or distribute a primary slate without first obtaining the permission of the candidates listed on the slate. The District Court issued a preliminary injunction against enforcement of the statute. Judgment was entered pursuant to the stipulation of the parties on August 29, 2003. The parties settled the attorney fee issue, with \$10,000 paid by Marion County Election Board and just over \$21,000 paid by the State of Indiana. No funds came out of the budget for the Indiana Election Division or the Indiana Election Commission. The payment for attorney's fees was paid out of the tort claims fund in consultation with the Governor's Office.

Mr. Simmons stated that the *Becky Majors v. Indiana Election Commission* case and the *Williamson v. Indiana Election Commission* case were brought by Libertarian candidates who claim that the Commission has illegally fined them under the statutes as candidates who failed to file campaign finance reports. They claim that they are not "candidates" under the definition of the statute for purposes of filing the reports as they have not raised or spent \$100 in furtherance of their campaign. These cases are now pending. The Majors case has a pending motion to dismiss. The Williamson case still has some pending damage claims.

Mr. Burdick asked if Mr. Patton had anything to add to the litigation report. Mr. Patton indicated that he did not have anything to offer outside the memo provided to the Commissioners.

Mr. Simmons stated that Daniel Day Waters was not in the litigation report, but there had been a voter registration inquiry. The Election Division was provided with a copy of a BMV receipt from the Delaware County Voter Registration Office. Someone voted on the BMV receipt. When this occurs, it is referred to the Election Division for an investigation to determine why someone who has a BMV receipt and appears to have registered at a BMV has not had their application processed through the county voter registration office.

10. Adjournment

The Chair asked for any other business. There being no further discussion, the Chair asked for a motion. Mr. Hiller moved to adjourn the meeting. Mr. Burdick seconded the motion. Mr. Burdick called the question and declared and with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no members voting "nay", the motion was adopted. The Commission then adjourned at 6:30 p.m.

Respectfully submitted,

J. Bradley King
Co-Director

Kristi Robertson
Co-Director

APPROVED:

Brian Burdick
Chairman